

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLARK D. MORSE,

Petitioner,

vs.

JACK PALMER, et al.,

Respondents.

3:11-cv-00076-ECR-VPC

ORDER

This is an action on a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254, filed by petitioner proceeding without counsel. Before the court is respondents' Motion to Dismiss the petition (ECF No. 10). Petitioner has not filed a response to the motion despite having had been advised of the perils of failure to do so. *See* ECF No. 17.

Under the local rules of civil procedure, failure of a party to file points and authorities in opposition to a motion will be construed as consent by that party to the granting of the motion. LR 7-2(d). Because petitioner has not opposed dismissal within the time allowed and has not sought additional time, the Court concludes petitioner has no opposition to offer and the motion to dismiss will be granted.

Should petitioner wish to appeal this decision, he must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make "a substantial showing of the denial of a constitutional right" to

1 warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473,
2 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the district court’s
3 assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In
4 order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are
5 debatable among jurists of reason; that a court could resolve the issues differently; or that the questions
6 are adequate to deserve encouragement to proceed further. *Id.*

7 Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing Section
8 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in the order
9 disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal
10 and request for certificate of appealability to be filed. Rule 11(a). This Court has considered the issues
11 raised by petitioner, with respect to whether they satisfy the standard for issuance of a certificate of
12 appealability, and determines that none meet that standard. The Court will therefore deny petitioner a
13 certificate of appealability.

14 **IT IS THEREFORE ORDERED** that the Motion to Dismiss (ECF No. 10) is
15 **GRANTED**. The petition is **DISMISSED WITH PREJUDICE**.

16 **IT IS FURTHER ORDERED** that no certificate of appealability shall issue.

17 The Clerk shall enter judgement accordingly.

18
19 Dated this 19th day of July 2011.

20
21 
22

23 UNITED STATES DISTRICT JUDGE
24
25
26